

# **WEST VIRGINIA LEGISLATURE**

**2026 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 5437**

By Delegates McCormick, Maynor, Kyle, Akers, Clark,  
Fehrenbacher, Heckert, Drennan, Worrell, and Pinson  
[Originating in the Committee on Health and Human  
Resources; Reported on February 23, 2026]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,  
2 designated §16-9H-1, §16-9H-2, §16-9H-3, §16-9H-4, §16-9H-5, §16-9H-6, §16-9H-7,  
3 §16-9H-8, §16-9H-9, §16-9H-10, §16-9H-11, §16-9H-12, §16-9H-13, §16-9H-14, §16-9H-  
4 15, §16-9H-16, §16-9H-17, §16-9H-18, §16-9H-19, and §16-9H-20, relating to regulating  
5 vape or smoke shop retailers; defining terms; regulating locations; establishing advertising  
6 standards; prohibiting certain locations; establishing operating requirements; establishing  
7 property standards; creating license requirements retailers; creating requirements for  
8 manufacturers; establishing a product directory; prohibiting certain products; establishing  
9 requirements for wholesalers; establishing service of process requirements; creating fees;  
10 creating civil penalties; creating criminal penalties; providing for appeals; providing for  
11 rulemaking; providing regulatory authority; providing jurisdictional requirements for  
12 retailers; setting standards for inspections; providing emergency rulemaking authority;  
13 providing an effective date; and providing exemptions.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 9H. VAPE SAFETY ACT.**

**§16-9H-1. Definitions.**

1 "Abandonment" and "abandoned" mean that the use with respect to a premises,  
2 regardless of intent of the user, has ceased or has discontinued for a period of at least 30 days, or  
3 an explicit declaration by the user of a premises that it has ceased a use with respect to the  
4 premises that is non-conforming to this article.

5 "Adult " means a person who is the age of 21 years or older.

6 "Alternative nicotine product" means any non-combustible product containing nicotine that  
7 is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any  
8 other means.

9 "Authorized vapor product" means a vapor product is listed in the vapor product directory  
10 established in §16-9H-11 of this code.

11 "Commissioner" means the Alcohol Beverage Control Commissioner or a duly authorized  
12 agent thereof.

13 "Drug paraphernalia" means as that term is defined in §47-19-3 of this code.

14 "Electronic cigarette" means any product containing or delivering nicotine or any other  
15 substance intended for human consumption that can be used by a person to simulate smoking  
16 through inhalation of vapor or aerosol from the product. The term "electronic cigarette" includes  
17 any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar,  
18 e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

19 "Improvement" means any building or structure, excluding fence, whether existing on the  
20 effective date located on a premises or, if there is a vested right to erect such structure or building,  
21 to be located within or upon a premises.

22 "Manager" means the individual person whom an applicant for a license has designated to  
23 attest to the information in the license application, who meets all the requirements of this article,  
24 and who is responsible for violations of this article.

25 "Premises" means a tract or tracts of land, whether containing existing or proposed  
26 improvements, within the territorial limits that are identified as a parcel or parcels on a tax district  
27 map or maps.

28 "Residence" means a detached or un-detached dwelling for one or more persons and in  
29 which there is not a predominating commercial or non-housing use, and shall not mean a motel,  
30 hotel, inn, or other lodging facility for transient persons.

31 "Tobacco-Derived Product" means any product containing, made or derived from tobacco,  
32 or containing nicotine derived from tobacco, that is intended for human consumption, whether  
33 smoked, breathed, chewed, absorbed, dissolved, inhaled, vaporized, snorted, sniffed, or ingested  
34 by any other means, including but not limited to cigarettes, cigars, cigarillos, little cigars, pipe  
35 tobacco, snuff, snus, chewing tobacco or other common tobacco containing products. A "tobacco-  
36 derived product" includes electronic cigarettes or similar devices, alternative nicotine products and

37 vapor products.

38 "Vape or smoke retailer" means a retail establishment that sells tobacco products,  
39 tobacco-derived, alternative nicotine products, vapor products and accessories.

40 "Vape or smoke shop" means a vape or smoke retailer that devotes at least 33 percent of  
41 its floor space to selling drug paraphernalia, tobacco products and accessories, as well as  
42 tobacco-derived and alternative nicotine products or vapor products and accessories.

43 "Vapor Product" means any non-combustible product containing nicotine that employs a  
44 heating element, power source, electronic circuit or other electronic, chemical, or mechanical  
45 means, regardless of shape and size, that can be used to produce vapor from nicotine in a solution  
46 or other form. A "vapor product" includes any electronic cigarette, electronic cigar, electronic  
47 cigarillo, electric pipe or similar product or device, and any vapor cartridge or other container of  
48 nicotine in a solution or other form that is intended to be used with or in an electronic cigarette,  
49 electronic cigar, electronic cigarillo, electronic pipe or similar product or device.

**§16-9H-2. License required; compliance with laws; penalties.**

1 (a) A person may not operate as a vape or smoke shop in or on any premises in the state  
2 without first obtaining a license issued by the commissioner pursuant to this article.

3 (b) A vape or smoke retailer may only sell authorized vapor products and shall comply with  
4 all federal, state, and local laws relating to the sales of tobacco, tobacco-derived products, and  
5 vapor products.

6 (c) A person licensed under this article is deemed approved to be registered as a hemp  
7 product retailer and a kratom retailer.

8 (d) A person who, directly or indirectly, violates subsection (a) of this section shall be guilty  
9 of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 and confined  
10 in \_\_\_\_\_ jail \_\_\_\_\_ for \_\_\_\_\_ not \_\_\_\_\_ more \_\_\_\_\_ than \_\_\_\_\_ one \_\_\_\_\_ year.

**§16-9H-3. Jurisdiction.**

1 By obtaining a vape or smoke shop license, the licensee is deemed to have agreed and

2 consented to the jurisdiction of the commissioner, which is Charleston, West Virginia and the  
3 Kanawha County circuit court, concerning enforcement of this article and any other related laws or  
4 rules.

**§16-9H-4. Vape or Smoke Shop License.**

1 (a) No vape or smoke shop license or license renewal may be granted unless the  
2 commissioner has determined that the applicant satisfies all of the following qualifications:

3 (1) The applicant is a United States citizen;

4 (2) The applicant is a person whose background, criminal record, if any, reputation, habits,  
5 and associations, do not threaten to:

6 (A) Compromise the public interest of the citizens of the state; or

7 (B) Weaken the effective regulation of vapor products.

8 (3) The applicant has not been convicted of perjury, false swearing, or any crime  
9 punishable by imprisonment in excess of one year under the applicable law of this state or in any  
10 other state or foreign country;

11 (4) The applicant has disclosed to the commissioner the identity of each person who has  
12 control of the applicant and those persons satisfy all qualifications required by this section and any  
13 applicable qualifications required by the commissioner. For purposes of this subdivision, a "person  
14 who has control of the applicant" means:

15 (A) A person associated with a corporate applicant, including any corporate holding  
16 company, parent company or subsidiary company of the applicant, but not including a bank or  
17 other licensed lending institution which holds a mortgage or other lien acquired in the ordinary  
18 course of business, who has the ability to control the activities of the corporate applicant or elect a  
19 majority of the board of directors of that corporation;

20 (B) A person associated with a noncorporate applicant who directly or indirectly holds any  
21 beneficial or proprietary interest in the applicant or who the commission determines to have the  
22 ability to control the applicant; and

23 (C) Key personnel of an applicant, including any executive, employee or agent, having the  
24 power to exercise significant influence over decisions concerning any part of the applicant's  
25 business operation.

26 (5) The applicant has provided a set of fingerprints and has completed and signed the  
27 statement provided for in subsection (e) of this section;

28 (6) A listed manager on the applicant's license application, or a licensee's renewal  
29 application, and further that the manager shall meet all other requirements of licensure; and

30 (7) The applicant has furnished all information, including financial data and documents,  
31 certifications, consents, waivers, individual history forms, and other materials requested by the  
32 commissioner for purposes of determining qualifications for a license.

33 (b) Except as otherwise set forth in this article, the commissioner may not disqualify an  
34 applicant from initial licensure because of a prior criminal conviction that remains unreversed  
35 unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In  
36 determining whether a criminal conviction bears a rational nexus to a profession or occupation, the  
37 commissioner shall consider at a minimum:

38 (1) The nature and seriousness of the crime for which the individual was convicted;

39 (2) The passage of time since the commission of the crime;

40 (3) The relationship of the crime to the ability, capacity, and fitness required to perform the  
41 duties and discharge the responsibilities of the profession or occupation; and

42 (4) Any evidence of rehabilitation or treatment undertaken by the individual.

43 (c) Except as otherwise set forth in this article, if an applicant is disqualified from licensure  
44 because of a prior criminal conviction, the commissioner shall permit the applicant to apply for  
45 initial licensure if:

46 (1) A period of five years has elapsed from the date of conviction or the date of release from  
47 incarceration, whichever is later;

48 (2) The individual has not been convicted of any other crime during the period of time

49 following the disqualifying offense; and

50 (3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a  
51 conviction for an offense of a violent or sexual nature may subject an individual to a longer period  
52 of disqualification from licensure, to be determined by the commissioner.

53 (d) An individual with a criminal record who has not previously applied for licensure may  
54 petition the commissioner at any time for a determination of whether the individual's criminal  
55 record will disqualify the individual from obtaining a license. This petition shall include sufficient  
56 details about the individual's criminal record to enable the commissioner to identify the jurisdiction  
57 where the conviction occurred, the date of the conviction, and the specific nature of the conviction.  
58 The commissioner shall provide the determination within 60 days of receiving the petition from the  
59 applicant. The commissioner may charge a fee to recoup its costs for each petition.

60 (e) The commissioner may not request a background check of an applicant under this  
61 section unless the applicant first provides a set of fingerprints and completes and signs a  
62 statement that:

63 (1) Contains the name, address, and date of birth appearing on a valid identification  
64 document of the applicant;

65 (2) Declares that the applicant has not been convicted of a crime or, if the applicant has  
66 been convicted of a crime, contains a description of the crime and the particulars of the conviction.  
67 For the purposes of this section, an applicant has not been convicted of a crime if he or she was  
68 convicted of a non-moving motor vehicle violation or a speeding violation that does not arise in  
69 connection with a motor vehicle collision;

70 (3) Notifies the applicant that the commissioner will request a background check; and

71 (4) Notifies the applicant of the applicant's rights under subsection (i) of this section.

72 (f) The State Police shall establish and maintain an adequate system for background  
73 investigations that:

74 (1) Ensures that timely background investigations are conducted on applicants for a

75 license to operate a vape or smoke shop, current licensees, and other persons required to be  
76 investigated by the commissioner in accordance with the provisions of this article or by legislative  
77 rules promulgated pursuant to this article;

78 (2) Provides for review and oversight of applicants, current licensees, and other persons  
79 on an ongoing basis;

80 (3) Provides that upon receipt of a background check report lacking disposition data,  
81 further research will be conducted in whatever state and local recordkeeping systems are  
82 available in order to obtain complete data;

83 (4) Provides for prompt notification to the commissioner of the results of background  
84 investigations before the issuance or renewal of any license; and

85 (5) Clearly defines a standard whereby a person's prior activities, criminal record, if any, or  
86 reputation, habits and associations are such as to pose a threat to the public interest or to the  
87 effective regulation of vape or smoke shops, or create or enhance the dangers of unsuitable,  
88 unfair, or illegal practices and methods and activities in the conduct of vape or smoke shop  
89 operations, thereby rendering that person ineligible for licensing.

90 (g) The license required by this section may not be transferred from one person to another  
91 or from one premises to another. A new license is required when a vape or smoke shop has a  
92 change in ownership.

93 (h) The license required by this section shall be in addition to, and not in lieu of, any other  
94 requirements set forth in federal, state, or local laws.

95 (i) Each applicant who is the subject of a background check is entitled to a copy of his or  
96 her background investigation report, and has the right to challenge the accuracy and  
97 completeness of any information contained in the report and to obtain a prompt determination as  
98 to the validity of the challenge before a final determination is made by the commissioner that would  
99 deny issuance of a license or renewal of a license.

100 (j) The commissioner may propose an emergency rule and a legislative rule for legislative

101 approval in accordance with the provision of §29A-3-1 et seq. of this code as may be necessary to  
102 carry out the purposes of this article.

**§16-9H-5. Annual license fee.**

1 (a) The annual license fee for a license issued under the provisions of this article to operate  
2 a vape or smoke shop is a minimum of \$1,200.

3 (b) The fee for any license issued following January 1 of any year that expires on June 30  
4 of that year is one half of the annual license fee prescribed by subsections (a) of this section.

5 (c) A licensee that fails to complete a renewal application and make payment of its annual  
6 license fee in renewing its license on or before June 30 of any subsequent year, after initial  
7 application, shall be charged an additional \$150 reactivation fee. The fee payment may not be  
8 prorated or refunded, and the reactivation fee shall be paid prior to the processing of any renewal  
9 application and payment of the applicable full year annual license fee. A licensee who continues to  
10 operate upon the expiration of its license is subject to all fines, penalties, and sanctions available  
11 in this article, all as determined by the commissioner.

12 (d) Funds derived from the fees shall be remitted by the commissioner to the state  
13 treasurer and divided as follows:

14 (1) Fifty percent shall be credited to the Agricultural Fees Fund established by the  
15 provisions of §19-1-4c of this code; and

16 (2) Fifty percent shall be credited to the Alcohol Beverage Control Enforcement Fund  
17 established by the provisions of §60-7-13 of this code.

**§16-9H-6. Land use regulations.**

1 (a) No person may locate or operate a vape or smoke shop except in compliance or  
2 conformance with this article.

3 (b) This article does not prohibit the continuance of the existing use of any tract of land or  
4 improvement for the purpose for which such tract of land or improvement is used on the effective  
5 date. This article does not prohibit the alteration or replacement of any improvement for the

6 purpose for which such Improvement is used on the effective date, except that the use shall not be  
7 expanded or enlarged unless it shall conform to this article.

8 (c) Notwithstanding anything in this article to the contrary, if an existing use is non-  
9 conforming with this article and has been abandoned, any future use of such land, premises or  
10 improvements shall conform with this article.

**§16-9H-7. Location.**

1 (a) No public entrance to a vape or smoke shop may be located within 300 feet of any  
2 property on which is situated any of the following:

3 (1) A public or private child daycare facility, kindergarten, elementary, grade, middle, junior,  
4 senior, secondary, or vocational school;

5 (2) A public or private institution of higher education;

6 (3) A public or private business school or college;

7 (4) A public park or recreational facility; including but not limited to a park, a playground,  
8 nature trail, swimming pool, athletic field, basketball court, tennis court, or wilderness area;

9 (5) A public library;

10 (6) A building used as a place of religious worship or instruction;

11 (7) A federal, state, county, or municipal office building;

12 (8) Another vape or smoke shop;

13 (9) An establishment that is licensed to serve alcoholic beverages; or

14 (10) A residence.

15 (b) Each of the prescribed distances to a public entrance of a vape or smoke shop shall be  
16 measured along a straight line from the nearest property line of the tract from which the  
17 measurement is to be made.

**§16-9H-8. Signs.**

1 (a) It is the purpose of this section to protect property values by encouraging visually  
2 appealing, non-distracting signs; to permit signs that do not, by reason of their size, location or

3 manner of display, to detract from the economic viability of other persons and establishments in  
4 the vicinity; to prevent signs from causing an annoyance or disturbance to a substantial number of  
5 persons; and to promote a healthy and business-friendly environment in which signs relating to a  
6 vape or smoke shop contribute to and encourage rather than detract from the economic viability of  
7 other persons and establishments in the vicinity.

8 (b) No person shall erect, structurally alter, or relocate any sign to advertise or promote any  
9 vape or smoke shop except in conformance with this article. It shall be unlawful for any person to  
10 erect, structurally alter or relocate any sign or improvement supporting a sign on or off the  
11 premises of a vape or smoke shop without first obtaining a permit based on an application.

12 (c) The application for the approval of a sign shall be made upon forms that the  
13 commissioner shall prepare and provide and shall include, without limitation, an accurate scaled  
14 sketch or drawing of the proposed sign, its proposed location, and the content of the proposed  
15 sign. The commissioner's agent may require that the location of a proposed sign be based on a  
16 survey by a registered land surveyor or engineer, at the expense of the applicant.

17 (d) After a sign is constructed or installed based on the application, the applicant shall  
18 provide a letter to the commissioner certifying that the sign was designed, fabricated, sized,  
19 constructed, and installed according to the application as approved.

20 (e) Any sign promoting a vape or smoke shop shall be flat and mounted to the wall of the  
21 improvement in which the vape or smoke shop is located and shall be mounted so that no part of  
22 the sign extends beyond the height of the improvement on which it is displayed.

23 (f) No merchandise or depictions of merchandise including images of marijuana or  
24 marijuana paraphernalia shall be displayed on any sign, exterior Improvement or fence advertising  
25 or promoting a vape or smoke shop or otherwise nor in any windows or any other area that may be  
26 viewed from a public street, alley, sidewalk, or public way.

27 (g) The size of any sign promoting a vape or smoke shop shall not exceed more than one  
28 square foot per one lineal foot of unit frontage of the property on which a vape or smoke shop is

29 located; however, at no time shall the maximum aggregate area of the sign exceed 30 square feet.  
30 The permitted maximum size of a sign shall apply to the entire area enclosing the extreme limits of  
31 writing, representation, emblem, or figure, together with any frame or other material or color  
32 forming an integral party of the display or used to differentiate a sign from the background against  
33 which it is placed. If a sign is painted on a wall, and includes background colors or graphics, and if  
34 the sign is an integral part of the overall graphic scheme, the entire wall shall be considered a sign  
35 and its measurement computed as such. If a sign is painted on a wall, and the sign can be logically  
36 separated and measured separately from the background graphics, the background graphic  
37 scheme shall not be computed in the sign size.

38 (h) No vape or smoke shop shall erect or display the following:

39 (1) A portable or movable sign on the premises thereof.

40 (2) A sign advertising or promoting a vape or smoke shop at an off-premises location.

41 (3) A flashing sign or animated sign which incorporates in any manner flashing or moving  
42 lights or any other visible moving or revolving part, except for the time, temperature, or date sign.

43 (4) A commercial banner, pennant, flag, spinner, or streamer.

44 (5) A sign that obstructs or impairs the vision of drivers, or obstructs or detracts from the  
45 visibility of, or resembles any traffic sign or traffic control device on a public street or road, by  
46 reason of size, shape, location, color, or illumination.

47 (6) A sign that makes use of such words as "stop", "look", "danger" or other similar words,  
48 phrases, symbols, or characters in such a manner as to imply the need or requirement of stopping  
49 or the existence of danger.

50 (7) A sign that obstructs free ingress or egress from a door, window, fire escape or other  
51 exit way.

52 (8) A sign that no longer advertises a bona fide business, activity, campaign, service, or  
53 product; or

54 (9) A sign advertising or promoting a business that has been abandoned.

55 (i) No vape or smoke shop shall erect or maintain more than one sign advertising or  
56 promoting a vape or smoke shop on the premises thereof.

57 (j) No sign promoting a vape or smoke shop shall contain lights or animated parts that  
58 incorporate in any manner flashing or moving lights or any other visible moving or revolving part,  
59 except for a sign indicating time, temperature, or date.

60 (k) No sign promoting a vape or smoke shop shall project more than 18 inches from the  
61 wall.

62 (l) The commissioner shall inspect the sign after it is completed and, upon a demonstration  
63 that the sign complies or conforms with this article, may issue a permit to the applicant. If the  
64 commissioner determines that the sign does not comply or conform with this article, the  
65 commissioner shall issue a written denial of the application therefore and shall include a written  
66 statement of the reasons for denial.

67 (m) The commissioner may inspect signs to determine whether they are a nuisance or  
68 detrimental to public health, safety, and welfare. If so, deemed detrimental by the commissioner,  
69 the applicant shall remove or repair the sign within five days following the commissioner's  
70 determination. The commissioner may grant additional time for the removal or repair if a good faith  
71 effort is made working toward compliance.

72 (n) If a sign promoting a vape or smoke shop is abandoned, the sign shall be deemed a  
73 nuisance misleading the public and affecting or endangering surrounding property values and  
74 shall be deemed detrimental to the public health, safety and general welfare of the community and  
75 shall be removed or abated immediately.

**§16-9H-9. Administration and enforcement.**

1 (a) The commissioner shall administer and enforce the provisions of the article, except as  
2 otherwise provided in this article.

3 (b) The commissioner shall:

4 (1) Receive and process all license applications;

5           (2) Endeavor to grant or deny the issuance of a vape or smoke shop license within 10  
6 working days of receipt of a complete license application;

7           (3) Conduct investigations as necessary to determine compliance or conformance with or  
8 violation of this article;

9           (4) Abate any violation of this article;

10           (5) Seek the assistance of the office of the West Virginia State Police, sheriff of the county  
11 or the office of the prosecuting attorney of the county to abate or prosecute any violation of this  
12 article;

13           (6) Assist law enforcement officers to abate or prosecute any violation of this article;

14           (7) Provide information about this article upon the request of citizens and public agencies;

15           (8) Pursue enforcement of this article as it and other law provides; and

16           (9) Administer this article in all respects.

17           (c) No commission, board, agency, officer, or employee of the county shall issue, grant, or  
18 approve any permit, license, certificate or any other authorization for any construction,  
19 reconstruction, alteration, enlargement or relocation of any vape or smoke shop building or  
20 structure, or for any use of land or building, that does not comply with the provisions of this article.

21           (d) In administering this article, the standard rule of rounding numbers to the nearest whole  
22 shall apply. When the unit of measurement results in a fraction less than one-half or less than .5,  
23 the fraction shall be disregarded. When the unit of measurement results in a fraction of one-half or  
24 more, or .5 or over, the number shall be rounded up to the next nearest whole number.

**§16-9H-10. Prohibition on use of Vape or Smoke Shop as residence.**

1           (a) No person may use, occupy, or permit the use or occupancy of any vape or smoke shop  
2 authorized for the retail sale of tobacco-derived products or vapor products as a residence,  
3 dwelling place, or location for human habitation.

4           (b) Notwithstanding any provision of this code to the contrary, a violation of subsection (a)  
5 of this section shall constitute grounds for the immediate suspension of operations at the premises

6 by the commissioner thereof until the violation is remedied.

**§16-9H-11. Establishment of the Vapor Product Directory; requirements; fees; notice of action; and removal of product from directory.**

1 (a) A manufacturer of vapor products that are sold in the state shall submit a certification to  
2 the State Tax Commissioner and the Alcohol Beverage Control Commissioner that separately lists  
3 each vapor product that is sold in this state.

4 (b) A manufacturer of vapor products that are sold in this state, whether directly or through  
5 a distributor, wholesaler, retailer, or similar intermediary or intermediaries, shall certify, under  
6 penalty of perjury on a form and in the manner prescribed by the commissioners, that the  
7 manufacturer agrees to comply with this article and that:

8 (1) The manufacturer has received a marketing authorization or similar order for the vapor  
9 product from the United States Food and Drug Administration pursuant to 21 U.S.C. Section 387j;  
10 or

11 (2) The manufacturer submitted a premarket tobacco product application for the vapor  
12 product to the United States Food and Drug Administration pursuant to 21 U.S.C. Section 387j,  
13 and the application either remains under review by the United States Food and Drug  
14 Administration or a final decision on the application has not otherwise taken effect.

15 (c) Each annual certification form required by subsections (a) and (b) of this section shall  
16 be accompanied by:

17 (1) A copy of the marketing authorization or other order for the vapor product issued by the  
18 United States Food and Drug Administration pursuant to 21 U.S.C. Section 387j, or evidence that  
19 the premarket tobacco product application for the vapor product was submitted to the United  
20 States Food and Drug Administration and a final authorization or order has not yet taken effect;  
21 and

22 (2) A payment of \$100 for each vapor product the first time a manufacturer submits a  
23 certification form for that vapor product and a payment of \$100 annually thereafter for each vapor

24 product.

25 (d) A manufacturer required to submit a certification form pursuant to subsections (a) and  
26 (b) of this section shall notify the State Tax Commissioner and the Alcohol Beverage Control  
27 Commissioner within 30 days of any material change to the certification form, including the  
28 issuance or denial of a marketing authorization or other order by the United States Food and Drug  
29 Administration pursuant to 21 U.S.C. Section 387j, or any other order or action by the United  
30 States Food and Drug Administration or a court of competent jurisdiction that affects the ability of  
31 the vapor product to be introduced or delivered into interstate commerce for commercial  
32 distribution in the United States.

33 (e) The State Tax Commissioner and the Alcohol Beverage Control Commissioner shall  
34 maintain and make publicly available on either commissioner's website a directory that lists all  
35 vapor product manufacturers and the vapor products for which certification forms have been  
36 submitted and shall update the directory at least monthly to ensure accuracy.

37 (f) The State Tax Commissioner and the Alcohol Beverage Control Commissioner shall  
38 provide a manufacturer of vapor products a notice and an opportunity to cure deficiencies before  
39 removing the manufacturer's vapor products from the directory.

40 (1) The State Tax Commissioner and the Alcohol Beverage Control Commissioner may not  
41 remove the manufacturer of a vapor product or its vapor products from the directory until at least  
42 15 days after the manufacturer has been given notice of an intended action. Notice shall be  
43 sufficient and be deemed immediately received by a manufacturer if the notice is sent either  
44 electronically to an electronic mail address or by facsimile to a facsimile number, as provided by  
45 the manufacturer in its most recent certification filed under subsections (a) and (b) of this section.

46 (2) The manufacturer of a vapor product shall have 15 business days from the date of  
47 receipt of the notice of the State Tax Commissioner and the Alcohol Beverage Control  
48 Commissioner's intended action to establish that the manufacturer of a vapor product or its vapor  
49 products should be included in the directory.

50 (g) If a vapor product is removed from the directory, each retailer, distributor, and  
51 wholesaler shall have 21 days from the date such product is removed from the directory to remove  
52 the product from its inventory and return the product to the manufacturer for disposal. Subsequent  
53 to 21 days following removal from the directory, a vapor product of a manufacturer identified in the  
54 notice of removal that has not been removed from a retailer, distributor, or wholesaler's inventory  
55 are considered contraband and are subject to seizure, forfeiture, and destruction, and may not be  
56 purchased or sold in the state. The cost of such seizure, forfeiture, and destruction shall be borne  
57 by the person or entity from whom the products are confiscated.

**§16-9H-12. Prohibition of sales of certain vapor products.**

1 (a) A person, vape or smoke retailer, or other entity may not sell or offer for sale a vapor  
2 product in this state that is not included in the vapor product directory, and a manufacturer of a  
3 vapor product may not sell, either directly or through a distributor or wholesaler, vape or smoke  
4 retailer, or similar intermediary or intermediaries, a vapor product in this state that is not included in  
5 the vapor product directory required by §16-9H-13 of this code.

6 (b) A manufacturer of a vapor product or a vape or smoke shop retailer not sell, either  
7 directly or through a distributor or wholesaler, a vapor product in this state that uses, in the name of  
8 the product, the labeling of the product, the packaging of the product, or the marketing of the  
9 product:

10 (1) The terms "candy," "candies," or variants in spelling such as "kandy" or "kandeez";

11 (2) The terms "bubble gum," "cotton candy," "gummy bear," "gummy worm," "lollipop," or  
12 other variant of these terms;

13 (3) References to cartoons, cartoon characters, superheroes, television shows, video  
14 games, movies, or other similar characters or references;

15 (4) References to or utilization of trade dress, trademarks, or other regulated imagery that  
16 imitiate or replicate trade dress, trademarks, or other imagery of food brands or products that have  
17 been primarily marketed to minors such as brands of breakfast cereals, cookies, juice drinks, soft

18 drinks, ice creams, and frozen pops; or

19 (5) References to or utilization of trade dress, trademarks, or other related imagery that  
20 imitate or replicate trade dress, trademarks, or other imagery of school supplies such as USB  
21 drives or highlighters, smart phones or smart watches, headphones, any item of clothing, any toy,  
22 video game devices or phone app integration features.

**§16-9H-13. Violations, fees and penalties for violations relating to the vapor product directory.**

1 (a) The following fees and penalties apply to violations of §16-9H-11:

2 (1) A distributor, wholesaler, or vape or smoke retailer, any other person or entity, who sells  
3 or offers for sale a vapor product in this state that is not included in the directory shall be subject to  
4 a civil penalty of \$100 per day for each vapor product offered for sale in violation of this section  
5 until the offending vapor product is removed from the market or until the offending vapor product is  
6 properly listed on the directory;

7 (2) A manufacturer of a vapor product whose vapor product is not listed in the directory and  
8 are sold in this state, whether directly or through a distributor, wholesaler, vape or smoke retailer,  
9 or similar intermediary or intermediaries, is subject to a civil penalty of \$100 per day for each vapor  
10 product offered for sale in violation of this section until the offending vapor product is removed from  
11 the market or until the offending vapor product is properly listed on the directory; or

12 (3) In addition, any manufacturer that falsely represents any of the information required by  
13 §16-9H-11(a) and §16-9H-11(b) of this code shall be guilty of a misdemeanor for each false  
14 representation.

15 (b) All fees and penalties collected by the State Tax Commissioner and the Alcohol  
16 Beverage Control Commissioner pursuant to this section shall be used for administration and  
17 enforcement of this section.

**§16-9H-14. Enforcement of the provisions of the vapor product directory; rule-making.**

1 (a) All requirements and provisions of the vapor product directory shall be enforced by the

2 State Tax Commissioner and the Alcohol Beverage Control Commissioner.

3 (b) To enforce the provisions of the vapor products directory, the State Tax Commissioner  
4 and the Alcohol Beverage Control Commissioner may examine all books, papers, invoices, or  
5 other records of any person or retailer in possession, control, or occupancy of any retail  
6 establishment or vape or smoke shop where vapor products are placed, stored, sold, or offered for  
7 sale, as well as the stock of vapor products on the premises. Every person or retailer in the  
8 possession, control, or occupancy of any premises where vapor products are placed, sold, or  
9 offered for sale shall give the State Tax Commissioner and the Alcohol Beverage Control  
10 Commissioner access to their facilities, and shall submit to all examinations authorized by this  
11 section.

12 (c) Each retail establishment, vape or smoke shop, or wholesaler that sells or distributes  
13 vapor products in this state may be subject to unannounced compliance checks for purposes of  
14 enforcing this section. At least 33% of vape or smoke shops and wholesalers operating in West  
15 Virginia each year shall be subject to compliance checks at least one time each year.

16 (d) Unannounced follow-up compliance checks of all noncompliant retail establishments,  
17 vape or smoke shops, or wholesalers shall be conducted within 30 days after any violation of this  
18 article. The State Tax Commissioner and the Alcohol Beverage Control Commissioner shall  
19 publish all violations of the requirements of the vapor product directory including the results of all  
20 compliance checks at least annually and shall make the results available to the public on request.

21 (e) The State Tax Commissioner and the Alcohol Beverage Control Commissioner may,  
22 pursuant to §29A-3-1 et seq., promulgate a separate or joint legislative rules, including emergency  
23 rules, as are necessary to effectuate the purposes of the vapor product directory.

**§16-9H-15. Service of Process; required appointment of agent for service of process by  
foreign manufacturers.**

1 (a) Any foreign manufacturer of vapor products must register as an out of state, or foreign,  
2 business with the Secretary of State. As a condition precedent to being included as a

3 manufacturer in the vapor product directory, the foreign manufacturer of vapor products shall  
4 appoint and continually engage without interruption the services of an agent for service of process  
5 in West Virginia to serve as such in any action or proceeding against it concerning or arising out of  
6 the enforcement of article and who may be served in any manner authorized by law. Service of  
7 process upon this agent shall constitute legal and valid service of process on the manufacturer of  
8 vapor products. The manufacturer of a vapor product shall provide the name, address, telephone  
9 number, and proof of the appointment the agent for service of process to the State Tax  
10 Commissioner and the Alcohol Beverage Control Commissioner.

11 (b) The manufacturer of a vapor product shall provide notice to the State Tax  
12 Commissioner and the Alcohol Beverage Control Commissioner 30 calendar days prior to  
13 termination of the appointment of an agent for service of process and shall further provide proof to  
14 the satisfaction of the commissioners of the appointment of a new agent for service of process no  
15 less than five calendar days prior to the termination of an existing agent for service of process  
16 appointment. If an agent for service of process terminates an agency appointment, the  
17 manufacturer of vapor product shall notify the commissioners of the termination within five  
18 calendar days and shall include proof to the satisfaction of the commissioners of the appointment  
19 of a new agent for service of process.

20 (c) Any manufacturer of a vapor product whose vapor products are sold in this state who  
21 has not appointed services of an agent for service of process, as required by this section, shall be  
22 deemed to have appointed the Secretary of State as its agent for service of process. The  
23 appointment of the Secretary of State as agent shall not satisfy the condition precedent required in  
24 subsection (a) of this section for a manufacturer of a vapor product to be include in the directory of  
25 vapor \_\_\_\_\_ products.

**§16-9H-16. Reporting.**

1 Beginning December 31, 2026, and annually thereafter, the State Tax Commissioner and  
2 the Alcohol Beverage Control Commissioner shall file an annual report with the Joint Committee

3 on Government and Finance regarding the status of the directory, manufacturers of vapor  
4 products and vapor products included in the directory, revenue and expenditures related to  
5 administration of the vapor product directory, and a detailed summary of enforcement activities  
6 undertaken pursuant to this article.

**§16-9H-17. Labeling.**

1 The commissioner shall propose legislative rules for promulgation in accordance with the  
2 provisions of §29A-3-1 et seq. of this code developing labeling standards for vapor products to  
3 include, at a minimum:

4 (1) A warning of the potential harmful effects of the vapor product;

5 (2) The required age of an individual to legally purchase or attempt to purchase the vapor  
6 product;

7 (3) The prohibition against selling or furnishing, by purchase, gift, or other means, the  
8 vapor product to a minor;

9 (4) A warning to keep the vapor products away from minors;

10 (5) A disclosure of the common or usual names of each ingredient used in the manufacture  
11 of such product, listed in descending order or predominance; and

12 (6) The name, physical address, website, and principal mailing address of the  
13 manufacturer or the person responsible for distributing such product.

**§16-9H-18. Penalties.**

1 (a) A person who, by himself or herself or acting through another, directly or indirectly,  
2 violates any of the provisions of this article for which no other penalty is provided, shall, for the first  
3 offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than  
4 \$2,500 or confined in jail for not more than 30 days, or both fined and confined.

5 (b) A person who, by himself or herself or acting through another, directly or indirectly, and  
6 for the second and each subsequent violation of any of the provisions of this article for which no  
7 other penalty is provided, he or she shall be guilty of a misdemeanor and, upon conviction thereof,

8 shall be fined not more than \$5,000 or confined in jail for not more than six months, or both fined  
9 and confined. The penalties provided for in this subsection shall be in addition to the revocation of  
10 the \_\_\_\_\_ offender's \_\_\_\_\_ license.

**§16-9H-19. Appeals.**

1 A person who is aggrieved by any order, requirement, decision, or determination made by  
2 the commissioner may appeal the decision pursuant to §29A-5-1 et seq. of this code. The appeal  
3 shall be filed on forms prescribed by the commissioner. The appeal shall specify the reasons for  
4 the appeal and shall be filed within 30 calendar days of the original action in question.

**§16-9H-20. Applicability.**

1 (a)The provisions of this article are effective upon the approved filing of an emergency rule  
2 by the commissioner.

3 (b) The provisions of this article do not apply to a cigar store, as defined in legislative rule,  
4 that does not sell vapor products.